

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

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US DEPT OF LABOR
ADMIN LAW JUDGES

OFFICE OF FEDERAL CONTRACT COMPLIANCE)
PROGRAMS, U.S. DEPARTMENT OF LABOR,)
)
Plaintiff,)
)
v.)
)
WACHOVIA CORPORATION,)
)
Defendant.)
)

Case No.
2001-OFC-0004

CONSENT FINDINGS
AND
ORDER

Pursuant to 41 C.F.R. §60-30-13, Plaintiff, Office of Federal Contract Compliance Programs ("OFCCP") and Defendant, Wachovia Corporation ("Wachovia"), a successor to First Union Corporation ("First Union"), the initially named defendant herein, have negotiated these Consent Findings and Order. The parties having consented to the entry of these Findings and Order, the undersigned Administrative Law Judge hereby approves and enters the following Findings and Order:

I. GENERAL PROVISIONS

1. The Office of Administrative Law Judges has jurisdiction over this action pursuant to 41 C.F.R. §§60-1.26 and 60-30.

2. At all times relevant to this case, Defendant has been a depository of federal funds and an issuing and paying agent for U.S. Savings Bonds and Savings Notes. Therefore, it is covered by Executive Order 11246 and 41 C.F.R. Part 60-1.

3. The Consent Findings and Order herein shall have the same effect as if made after a full hearing.

4. The entire record on which the Consent Findings and Order herein are made shall be the Complaint herein and these Consent Findings and Order, including any exhibits thereto.

5. The parties waive all further procedural steps, including the right to challenge or contest the obligations entered into in accordance with these Consent Findings and Order.

6. All violations of the Executive Order 11246 alleged in the Complaint herein and in the Show Cause Notice dated August 9, 1999, shall be deemed fully resolved by these Consent Findings and Order.

7. By consenting to the entry of these Consent Findings and Order, Wachovia does not admit to any violation of Executive Order 11246 or its implementing regulations, and Wachovia further denies that it unlawfully discriminated against any person. Wachovia enters into

these Consent Findings and Order to demonstrate its ongoing commitment to equal employment opportunity and affirmative action.

8. Nothing contained herein is intended to relieve Wachovia of any obligation to comply with the Executive Order 11246 or its implementing regulations in the future.

9. These Consent Findings and Order shall be deemed Final on the date that they are signed by the Administrative Law Judge.

10. These Consent Findings and Order shall be binding upon OFCCP and Wachovia as well as Wachovia's successors, assigns, divisions and subsidiaries.

II. MONETARY PAYMENT

11. In order to resolve OFCCP's allegations regarding discrimination in compensation, Wachovia will pay to certain women ("Identified Employees") covered by this action, who were employed by Wachovia or its predecessor during the period of time of January 1, 1997 through December 31, 2002, \$5,500,000 in back pay and interest to address alleged salary disparities for the time period of January 1, 1997 through December 31, 2002.¹ The above stated amount consists of \$4,829,000 in back salary and

¹ OFCCP has determined that no statistically significant salary disparities exist for the population involved in the underlying compliance review as of January 1, 2003.

bonus payments, and \$671,000 in interest. The Identified Employees, together with back pay and interest due to each one, are listed on Exhibit A attached hereto.

12. Wachovia will use its best efforts to find current addresses for all individuals listed on Exhibit A. These efforts shall include, but are not limited to, sending to them, at their last known address, the Notice of Eligibility, attached hereto as Exhibit B. This Notice shall request a confirmation of current address and social security number and provide a form, attached hereto as Exhibit C, that the individuals should use to provide the requested information. This mailing shall be completed within 45 calendar days after the date that these Consent Findings and Order become final. Within 90 calendar days of the date that these Consent Findings and Order become final, Wachovia will provide to OFCCP the current addresses and social security numbers for all individuals listed on Exhibit A who have been located by Wachovia. At the same time, Wachovia will identify in writing to OFCCP any individual included on Exhibit A who has not been located by Wachovia, including each such individual's social security number and last known address, and will inform OFCCP of the efforts it expended in attempting to locate such individuals.

13. Upon receipt of this information, OFCCP, to the extent that it deems it appropriate, will attempt to locate individuals included on Exhibit A who have not been located by Wachovia. Within 45 calendar days of OFCCP's receipt of this information from Wachovia, OFCCP will notify Wachovia in writing of the address of any additional individual(s) located by OFCCP. Wachovia will then send to those individuals the Notice of Eligibility Form and Confirmation Form (Exhibits B and C) referred to above. The persons entitled to receive back pay and interest shall be all individuals listed on Exhibit A who are located by Wachovia or OFCCP within the time frames enumerated above.

14. Within 10 calendar days of the deadline for all located individuals to return their confirmation forms to Wachovia, Wachovia shall send to OFCCP a complete list of individuals, if any, who have either not been located or who have not returned their confirmation forms. The scheduled back pay and interest amount to be paid to these individuals shall be divided pro rata among the located individuals who returned their confirmation forms. Within 15 days after receipt of this list, OFCCP shall provide to Wachovia a revised Exhibit A showing amounts to be paid after the pro-rata distribution.

15. Within 30 calendar days of Wachovia's receipt of a revised Exhibit A, Wachovia will distribute, via certified mail, back pay and interest in accordance with the amounts listed in Exhibit A as revised, if at all, by any additional pro rata distribution discussed in paragraph 14. Each share of the back pay portion of the monetary payment will be reduced by withholding for federal income tax, state income tax, and the employee's share of FICA.

16. Wachovia will provide OFCCP with a list of the individuals and payment amounts to such individuals within thirty (30) business days of the completion of the payments. Wachovia will also provide copies of any available cancelled checks within ninety (90) calendar days after the payment date. If checks are not cashed within 180 days from the date of mailing, they will become void.

III. WACHOVIA COMMITMENTS FOR SELF-MONITORING, RECORD KEEPING, AND REPORTING

17. **Self-monitoring.** In calendar years 2005, 2006 and 2007, Wachovia will conduct an annual analysis of the salaries of all employees in the headquarters facility located at One Wachovia Center, 301 South College Street, Charlotte, NC 28288 in the jobs that have been the subject of this action and the underlying compliance review. Based on such analysis, Wachovia will take corrective action with

regard to any disparities that are statistically significant and adverse to female employees. This self-monitoring shall be conducted based on compensation data as of December 31 of each year. The self-monitoring analysis shall be completed within 60 days of such date and necessary adjustments to compensation within 30 days thereafter. OFCCP will be available to provide technical assistance if requested by Wachovia, but any such assistance or the absence thereof will not constitute an endorsement of Wachovia's methodology.

18. **Reports.** No later than 30 days after any necessary salary adjustments based on self-monitoring are made, Wachovia shall inform OFCCP of the extent to which salary adjustments, if any, were made pursuant to the preceding paragraph. Such reports shall include the identity of the individuals who had received salary adjustments as well as the corresponding amounts of salary adjustments.

All reports and notifications that Wachovia furnishes to OFCCP pursuant to this Agreement will be deemed submitted upon receipt by the Charlotte, North Carolina OFCCP office. All information or notification that OFCCP furnishes to Wachovia pursuant to this Agreement will be deemed submitted upon receipt by the Manager of Employment

Compliance, Wachovia Corporation, 301 South College Street, One Wachovia Center, Charlotte, NC 28288.

19. **Record keeping.** In accordance with 41 C.F.R. 60-1.12, Wachovia will ensure that all applications for jobs and other personnel and employment records are maintained for at least two years from the date of making the record or of the personnel action involved, whichever is later. In addition, Wachovia will ensure that applicant flow logs are accurately maintained and include, at a minimum; application date, race, gender, position applied for (if specified) and all final dispositions (e.g., hired, rejected) with respect to each applicant as well an indication as to whether the applicant is a current Wachovia employee or an external applicant.

IV. IMPLEMENTATION AND ENFORCEMENT

20. Wachovia will not retaliate or in any way discriminate against any individual because he or she assisted OFCCP or received payments under the terms of these Consent Findings and Order.

21. The Office of Administrative Law Judges retains jurisdiction to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of these Consent Findings and Order.

22. If, at any time after entry hereof, OFCCP believes Wachovia has violated any of the terms of these Consent Findings and Order, OFCCP will notify Wachovia, in writing, of its alleged nonperformance. The notification will identify the term(s) of the Consent Findings and Order alleged to have been violated and the facts that demonstrate the violation. Wachovia will have twenty (20) calendar days in which to respond in writing except where OFCCP alleges that such delay would result in irreparable injury.

23. Enforcement proceedings for violation of the Consent Findings and Order herein may be initiated at any time after the twenty-day period in paragraph 22 has elapsed or sooner if irreparable injury is alleged.

24. Violation of the Consent Findings and Order herein may subject Wachovia to the sanctions set forth in Executive Order 11246 and its implementing regulations and other appropriate relief.

25. This Order shall expire and terminate one hundred eighty (180) days after completion of the self-monitoring and reporting obligations contained in paragraphs 17 and 18 herein. This provision shall not limit the right of OFCCP to (a) bring an action alleging failure to comply with the Consent Findings and Order provided that Wachovia is given

notice of the alleged failure within the term of the Order or (b) bring an action alleging a violation of the non-retaliation provisions of Paragraph 20 herein. The above Consent Findings and Order are hereby approved and, pursuant to 41 C.F.R. §60-30.13(d), shall constitute the final administrative Order in this case.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

ADMINISTRATIVE LAW JUDGE

DATE: _____

Agreed and Consented to:

WACHOVIA CORPORATION

By: *J. Thomas Kilpatrick*
J. THOMAS KILPATRICK
Alston & Bird, LLP
Attorney for Wachovia
Corporation

HOWARD M. RADZELY
Solicitor of Labor

STANLEY E. KEEN
Regional Solicitor

LARRY A. AUERBACH
Counsel

By: *Channah S. Brojde*
CHANNAH S. BROJDE
Senior Trial Attorney

DATE: *September 15, 2004*

Attorneys for the Office
of Federal Contract
Compliance Programs,
United States Department
of Labor.

DATE: *9/15/04*

SOL Case No. 99-10955

Exhibit A - redacted under FOIA Exemption 6
[39 page list of class members]

EXHIBIT B

CONSENT FINDINGS AND ORDER

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, U.S.
DEPARTMENT OF LABOR v. Wachovia Corporation
Case No. 2001-OFC-0004

NOTICE OF ELIGIBILITY FOR
REMEDY (BACK PAY)

The Wachovia Corporation ("Wachovia") and the Department of Labor Office of Federal Contract Compliance Program ("OFCCP") have entered into Consent Findings and Order to resolve any allegations of pay discrimination based on gender.

Under these Consent Findings and Order, you are eligible to receive the following amount:

A lump sum payment in the amount of \$____, minus legal deductions.

In order to provide you with this payment, we must have correct current information regarding your address and social security number. Therefore, it is very important that you complete the attached form and return it to us at the address indicated on the form. A self-addressed envelope is enclosed for your convenience. Please return this form as soon as possible, but not later than 20 days after the date of this Notice.

If you have any questions, you may call _____
at _____.

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OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS, U.S.
DEPARTMENT OF LABOR v. Wachovia Corporation
Case No. 2001-OFC-0004

ADDRESS AND SOCIAL SECURITY VERIFICATION

To be eligible for the monetary distribution under the terms of these Consent Findings and Order, you must provide the information sought below. Please make sure that all the information provided is legible.

Name: _____

Current address:

Please notify us at the address listed below if your address changes within the next twelve months.

Your Social Security Number is required for tax purposes:

_____-__-____-

I certify the above as true and correct.

SIGNATURE

DATE

You must complete and return this form, by mail or other delivery method, within 20 days of the date of the Notice of Eligibility to:

Wachovia Corporation
301 South College Street
One Wachovia Center
Charlotte, NC 28288
Attention: Mr. Ronald G. Tomaszewski

A self-addressed envelope is enclosed for your convenience.